IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10540 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARESH @ RAKESH PREMJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr.Uday Bhatt, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

#. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged his detention order passed against him by the Police

Commissioner, Rajkot City on 3.8.1999 in exercise of the powers conferred upon him under section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (PASA Act for short). The petitioner was detained in pursuance of the said order from 21.6.2000.

#. The grounds of detention placed on record reveal that the detaining authority has taken into consideration the following 8 crimes registered against him:

1. C.R.No.704 of 1998 at B Division Police Station, Rajkot on 1.11.98.

2. C.R.No.751 of 1998 at B.Division Police Station, Rajkot on 16.11.98.

3. C.R.771 of 1998 at B.Division Police Station, Rajkot 21.11.98.

4. C.R.No.822 of 1998 at B Division Police Station, Rajkot 10.12.98.

5. C.R.No. 23 of 1999 at B Division Police Station, Rajkot 10.1.99.

6. C.R.No. 40 of 1999 at B.Division Police Station, Rajkot 4.1.99.

7. C.R.No.155 of 1999 at A Division Police Station, Bhavnagar 18.3.99.

8. C.R. No.156 of 1999 at A Division Police Station, Bhavnagar 18.3.99.

The detaining authority considered the investigation papers in the above said crimes registered against the petitioner and came to the conclusion that in association with other associates in different cities of Gujarat the petitioner indulged himself in crimes of house breaking and thefts. The detaining authority came to the conclusion that the petitioner and his associates had been indulging in this anti-social activities since long. The behavior of the detenu according to the detaining authority is recurring in nature and gradually the anti social activities of the petitioner increased which caused disturbance to the public order and public safety. It was also observed by the detaining authority that the petitioner was released on bail in the above said offences by the court and the petitioner after releasing

on bail also continued his illegal and anti social activities of house breaking and theft of the articles with his associates. The detaining uthority also observed that no other alternative was left with the detaining authority except to detain the petitioner under the PASA Act to prevent him from repeating his anti social and illegal activities which caused obstruction and disturbance to the public safety and public order.

#. Learned advocate for the petitioner Ms. Subadharaben Patel and Mr. Uday Bhatt learned AGP for the respondents were heard.

#. The order of detention impugned has been challenged by the petitioner on various grounds. One of the grounds which was urged is regarding vitiating of the order of detention passed by the detaining authority for non application of mind. It was vehemently urged that the detention order impugned suffers from the vice of delay in passing the order of detention. It was urged that out of the 8 crimes registered against the petitioner, the last in point of time was registered on 18.3.1999 before the Bhavnagar City A Division Police Station under sections 454, 457 and 383 of the Indian Penal Code. It was urged that the order of detention came to be passed only on 3.8..1999, almost after 5 months. It was urged that no explanation is forthcoming from the detaining authority as to why the delay was caused in passing the order under PASA Act against the petitioner. It was therefore, contended that the order was required to be set aside on this ground alone.

#. Considering the rival contention and scrutinising the record, it clearly surfaces that the last offence came to be registered against the petitioner on 18.3.1999 and the order of detention was passed on 3.8.1999. The essence of legislation like PASA Act is to detain such persons without trial to put him away temporarily from society so that the illegal activities in which the said person might be indulging could be prevented forthwith. Therefore, the subjective satisfaction of the detaining authority and the reasoning can only be based on past behavior of a person, his tendency to repeat same behaviour of dangerous activities in the light of the surrounding circumstances. The past conduct of such person may be consisting of several acts constituting crimes or may be a single act but capable of leading to only conclusion that such person is having such repeating tendency of behavior that in all probability he was likely to repeat and recur his behavior. The detaining authority has to reach to subjective satisfaction from

the materials available with him as to whether the present conduct of such person is capable of recurring tendencies. The detaining authority must discorn clearly live link between the past behaviour and the grounds of detention.

#. The case on hand reveals that atleast 8 crimes of the similar nature are registered against the petitioner. The detaining authority has thus taken into consideration the past behaviour of the detenu in passing of the order of detention. The crux of the matter therefore, would be whether the alleged illegal and dangerous activities of the petitioner, necessitated to pass an order of detention, is proximate to the time when the order is made or the live link between the prejudicial activities and the purpose of detention is snapped. The time gap between the 8 offences registered against the petitioner admittedly may lead to a reasonable inference that the petitioner might have tendency to repeat his anti social or illegal behavior. But at the same time, the detaining authority must also take into consideration the last offence registered against such person and the behavior of such person thereafter. It is not he case of detaining authority that, after 18.3.1999 the date on which the last crime registered against the petitioner, till 3.8.1999, the date on which the detention order came to be passed , any crime registered against the petitioner or any material was available with the detaining authority which might lead to reasonable inference as to recurring tendency of illegal or anti social behavior of the petitioner. Under the detention law, especially under PASA Act, having regard to the object of the legislation, important consideration is whether the person against whom the action proposed has a tendency of repeating his dangerous behavior. Subjective satisfaction, therefore, of the detaining authority must be based on proximity between past behaviour, repeating tendency and the passing of the order, because it affects the right of the detenu as guaranteed under Article 22(5) of the Constitution. In the present case, there is nothing on record which establishes that after 18.3.199, the petitioner indulged in any of the activities which could be linked with his past behavior which is recorded as several crimes. The live link from which an assurance could be inferred to the extent that the petitioner was likely to repeat his illegal behavior is totally missing from the facts of the present case. The detaining authority has taken stale cases registered against the petitioner into consideration. In the case of Hemlata Kantilal Shah vs. State of Maharashtra (1981) 4 SCC 647 = AIR 1982 SC 8 the Apex Court ruled that the delay ipso

facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. What is required by law is that the delay must be satisfactorily explained by the detaining authority. In Pradeep Nilkanth Paturkar vs. S. Ramamurthi & ors reported in AIR 1994 S.C. 656 in the similar circumstances under Maharashtra Prevention of dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act (55 of 1981) the Apex Court observed that taking into consideration the unexplained delay in passing of the detention order warrants quashing of the concerned detention order.

#. In this case also the explanation of the detaining authority about the delay in passing of the order is not forth coming . It is obligatory on detaining authority to formally comply with the provisions of Article 22(5) of the Constitution. Under article 226 of the Constitution, this court has to see whether the formalities enjoined by Article 22(5) have been complied with by detaining authority. In my view the question is not whether the petitioner is in fact prejudicially affected by delay in passing of the order, but the question is whether the constitutional safeguard of the petitioner has been infringed. Needless it is to observe that preventive detention is serious invasion on personal liberty of a citizen and whatever safeguard provided by the Constitution against the improper exercise of the powers must be jealously watched and enforced by the courts.

The order of detention of the petitioner, is therefore, vitiated by unexplained delay in passing the order and for want of reasonable proximity between the past behaviour of the petitioner and passing of the order of detention.

#. In this view of the matter the detention order passed against the petitioner under the PASA Act by the Police Commissioner , Rajkot city on 3.8.1999 is quashed and set aside. The petitioner Nares @ Rakesh Premjibhai Patel is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R.Vora.J)

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